



SB-1312 Bar pilotage rates. (2015-2016)

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AMENDED IN SENATE APRIL 04, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

NO. 1312

Introduced by Senator Wieckowski

February 19, 2016

An act to amend Sections 1122, 1137, 1170.1, 1190, 1190.1, 1195.1, 1196.1, 1200, 1201, 1201.5, and 1202 of, to add Sections 1103, 1190.2, 1190.3, 1190.5, 1191.1, 1195.2, 1196.2, and 1204 to, to add and repeal Section 1190.4 of, and to repeal and add Section 1191 of, the Harbors and Navigation Code, relating to harbors and navigation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1312, as amended, Wieckowski. Bar pilotage rates.

(1) Existing law provides for the licensing and regulation of pilots for the Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun, by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun in the Transportation Agency. Existing law establishes pilotage rates and surcharges that are paid to licensed pilots by vessels piloted in those bays. Existing law establishes those pilotage rates and surcharges, and provides for changes to them based on the number of pilots licensed by the board and recommendations by the board to the Legislature. Existing law requires each licensed pilot to submit a monthly account to the board of all moneys received by the pilot for pilotage services.

This bill would revise and recast those provisions and would require that certain surcharges be separately identified on the pilots' invoices and in their monthly account to the board. The bill would, until January 1, 2021, additionally authorize a technology surcharge, not to exceed a cumulative amount of \$1,200,000, to recover pilots' costs for navigation software, hardware, and equipment authorized by the board on or after January 1, 2017. The bill would require the board to submit a schedule of all pilotage rates and surcharges to the Office of Administrative Law for publication in the California Regulatory Notice Register and to post that schedule on the board's Internet Web site. The bill would require an independent audit of all charges collected by pilots to be conducted annually by a public accountant selected by the board.

(2) Existing law requires the Board of Pilot Commissioners to review and evaluate pilotage expenses in making recommendations to the Legislature to adjust certain pilotage rates. Existing law establishes procedures for any

at the conclusion of the hearings, to review and evaluate the evidence and to submit to the Secretary of the Senate and the Chief Clerk of the Assembly a copy of its findings and recommendations for a final determination.

Existing law requires each vessel to pay a board operations surcharge to compensate the board and the Transportation Agency for the services and incidental expenses of the board and agency. Existing law requires those moneys to be deposited in the Board of Pilot ~~Commissioner's~~ **Commissioners'** Special Fund and continuously appropriates those moneys for the compensation and expenses of the board and its officers and employees.

This bill would instead require the hearing on a petition to be before an administrative law judge, as provided, who would act as a finder of fact. The bill would prescribe procedures for the conduct of those hearings, the review of evidence, and the filing of decisions. The bill would require the board to review and evaluate the administrative law judge's decision and either submit the decision to the Secretary of the Senate and the Chief Clerk of the Assembly or prepare and submit a written statement of its reasons for not doing so. The bill would require the administrative law judge to be compensated by the board from revenues from the board operations surcharge. By authorizing the expenditure of continuously appropriated funds for a new purpose, the bill would make an appropriation.

(3) Existing law requires that moneys collected from a pilot trainee surcharge and a pilot continuing education surcharge be deposited into the Board of Pilot ~~Commissioner's~~ **Commissioners'** Special Fund and continuously appropriates those moneys for pilot trainee and pilot continuing education programs, respectively.

This bill would create the Pilot Trainee Special Fund, require moneys collected from the pilot trainee surcharge to be deposited into that fund, and continue to continuously appropriate those moneys for pilot trainee programs. The bill would also create the Pilot Continuing Education Special Fund, require moneys collected from the pilot continuing education surcharge to be deposited into that fund, and require those moneys, upon appropriation, to be used for pilot continuing education programs.

(4) Under existing law, a pilot who is carried to sea against the pilot's will or unnecessarily detained on board a vessel, as provided, is entitled to receive \$600 per day, plus expenses, from the owner, operator, or agents of the detaining vessel.

This bill would increase that amount to \$2,028 per day.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to improve the process by which bar pilotage rates and charges are set, managed and maintained, and published by the Board of Pilot Commissioners. It is further the intent of the Legislature that the provisions of this act will reflect the actual rates and charges paid by vessels operating in Monterey Bay, and the Bays of San Francisco, San Pablo, and Suisun. It is not the intent of the Legislature that this act will result in the increase of any pilotage rates or charges currently in effect.

SEC. 2. Section 1103 is added to the Harbors and Navigation Code, to read:

1103. The Legislature finds and declares all of the following:

(a) Transparency and accountability regarding how the board operates and makes its decisions is critical to gaining and retaining the confidence of the public and serving the ratepayers affected by its decisions.

(b) In order to ensure and promote the highest level of safety in pilotage and to eliminate competition between state-licensed pilots on the basis of the rate of charges to vessels, the state enacts statutes that set a tariff of charges and levies that must be paid by vessels for the provision of pilotage services by a pilot licensee.

(c) The economic benefits of ocean-going vessels' safe navigation to our ports are essential to our day-to-day lives and fundamentally affect every California family and business. Because of the importance that ocean-going vessels play in our economy, the pilotage tariff schedule set forth in this division, its management, and any recommendations for the amendment of existing pilotage rates should be maintained and implemented in a manner that is transparent and accountable to the public.

the public's interest in monitoring the exercise of that power. Accordingly, the conduct of the public's business by the board is of the highest public interest.

SEC. 3. Section 1122 of the Harbors and Navigation Code is amended to read:

1122. (a) A pilot carried to sea against the pilot's will, or unnecessarily detained on board a vessel when a pilot vessel is in attendance to receive the pilot, shall receive two thousand twenty-eight dollars (\$2,028) per day while so carried to sea or detained, plus reimbursement for any expenses incurred by the pilot in returning to the pilot station.

(b) The owner, operator, and agents of the detaining vessel are jointly and severally liable for paying the amount specified in subdivision (a).

SEC. 4. Section 1137 of the Harbors and Navigation Code is amended to read:

1137. (a) The account required pursuant to Section 1136 shall show all of the following:

- (1) The name of each vessel piloted.
- (2) The name of each vessel for which pilotage has been charged or collected.
- (3) The amount charged to or collected for each vessel.
- (4) Any rebates made and allowed and for what amounts.
- (5) The amount of the fees and surcharges not collected pursuant to Section 1193.
- (6) The depth of each vessel's draft and its highest gross tonnage.
- (7) Whether the vessel was inward or outward bound.

(b) The board shall record the accounts in full detail in a book prepared for that purpose. The account book is a public record.

(c) The board shall cause an independent audit of all charges collected by pilots pursuant to this division to be conducted annually by a public accountant selected by the board.

SEC. 5. Section 1170.1 of the Harbors and Navigation Code is amended to read:

1170.1. In determining the number of pilots needed, pursuant to Section 1170, the board shall take into consideration the findings and declarations in Sections 1100, 1101, and 1102, the results of an audit made pursuant to, and the factors specified in, Section 1203, the industry's current economic trends, fluctuations in the number of vessel calls, the size of vessels, whether the need for pilotage is increasing or decreasing, the 1986 manpower study adopted by the board, and the results of the study required pursuant to Section 1196.5.

SEC. 6. Section 1190 of the Harbors and Navigation Code is amended to read:

1190. (a) (1) Every vessel spoken inward or outward bound shall pay a rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, ~~and~~

~~(1) Eight dollars and eleven cents (\$8.11) and~~ Suisun of ten dollars and twenty-six cents (\$10.26) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of ninety-two and four hundred twenty-three thousandths mills (\$0.092423) per high gross registered ton.

(2) A minimum charge for bar pilotage shall be six hundred sixty-two dollars (\$662) for each vessel piloted.

(3) The vessel's deepest draft shall be the maximum draft attained, on a stillwater basis, at any part of the vessel during the course of that transit inward or outward.

(b) The rate specified in subdivision (a) is the bar pilotage rate and that rate alone shall apply to a pilotage that passes through the Golden Gate to or from the high seas to or from a berth within an area bounded by the Union

as specified in subdivision (a) and an additional movement fee as specified pursuant to Section 1191.

(c) The rate established in paragraph (1) of subdivision (a) shall be for a trip from the high seas to dock or from the dock to high seas. The rate specified in Section 1191 shall not be charged by pilots for docking and undocking vessels.

SEC. 7. Section 1190.1 of the Harbors and Navigation Code is amended to read:

1190.1. Every vessel that uses a pilot under this division while navigating the waters of Monterey Bay shall pay the rate provided by Section 1190.

SEC. 8. Section 1190.2 is added to the Harbors and Navigation Code, to read:

1190.2. (a) In addition to the rate specified in Section 1190, there may be an incremental rate of additional mills per high gross registered ton as is necessary and authorized at the direction of the board if, after a public meeting conducted in accordance with the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), the board determines that there has been a catastrophe or natural disaster that has resulted in significant, unexpected cost increases that are necessary to restore pilot services to customers, repair, replace, or restore damaged pilot facilities or equipment, or to comply with government agency orders resulting from a declared disaster.

(b) The incremental mill rate charge authorized by this section shall be identified as a catastrophic event surcharge on the pilots' invoices and separately accounted for in the accounting required by subdivision (b) of Section 1136.

(c) Proceeds from the catastrophic event surcharge shall be used only to recover the pilots' costs related to the catastrophe or natural disaster underlying the incremental mill rate charge, and the surcharge shall cease to be collected upon full recovery of those costs.

SEC. 9. Section 1190.3 is added to the Harbors and Navigation Code, to read:

1190.3. (a) There shall be an incremental rate of additional mills per high gross registered ton as is necessary and authorized by the board to recover the pilots' costs of obtaining new pilot boats and of funding design and engineering modifications for the purposes of extending the service life of existing pilot boats, excluding costs for repair or maintenance. The board may adjust the incremental rate to reflect any associated operational savings resulting from the modification of pilot boats under this section, including, but not limited to, reduced repair and maintenance expenses.

(b) The incremental mill rate charge authorized by subdivision (a) shall be identified as a pilot boat surcharge on the pilots' invoices and separately accounted for in the accounting required by subdivision (b) of Section 1136.

(c) Net proceeds from the sale of existing pilot boats shall be used to reduce the debt on the new pilot boats and any debt associated with the modification of pilot boats under this section.

SEC. 10. Section 1190.4 is added to the Harbors and Navigation Code, to read:

1190.4. (a) There shall be a movement fee as is necessary and authorized by the board imposed to recover a pilot's costs for the purchase, lease, or maintenance of navigation software, hardware, and ancillary equipment that is authorized by the board as reasonable and necessary on or after January 1, 2017.

(b) The software, equipment, and technology covered by this section shall be used strictly and exclusively to aid in piloting on the pilotage grounds.

(c) The movement fee authorized by this section shall be identified as a navigation technology surcharge on a pilot's invoices and separately accounted for in the accounting required by subdivision (b) of Section 1136.

(d) The cumulative amount of the surcharge collected pursuant to this section shall not exceed one million two hundred thousand dollars (\$1,200,000).

section at least quarterly.

(f) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 11. Section 1190.5 is added to the Harbors and Navigation Code, to read:

1190.5. The board shall submit to the Office of Administrative Law for publication in the California Regulatory Notice Register and shall post on its Internet Web site the schedule of all pilotage rates and surcharges in effect pursuant to Sections [1159.2](#), [1165](#), 1190, 1190.2, 1190.3, ~~and 1190.4~~ [1190.4](#), [1195](#), and [1196](#) as the "BAR PILOTAGE TARIFF."

SEC. 12. Section 1191 of the Harbors and Navigation Code is repealed.

SEC. 13. Section 1191 is added to the Harbors and Navigation Code, to read:

1191. Any ship movement or special operation that does not constitute bar pilotage shall be subject to, and shall pay, the rate specified in the schedule of pilotage rates for bay and river pilotage services, as adopted by the Legislature in Section 2 of Chapter 765 of the Statutes of 2002, consistent with the board's adoption or rate recommendations in May 2002.

SEC. 14. Section 1191.1 is added to the Harbors and Navigation Code, to read:

1191.1. The board shall submit to the Office of Administrative Law for publication in the California Regulatory Notice Register and shall publish on its Internet Web site, the schedule of all pilotage rates for ship movement or special operations that do not constitute bar pilotage, as described in Section 1191, [and applicable surcharges](#) as the "BAY AND RIVER PILOTAGE TARIFF."

SEC. 15. Section 1195.1 of the Harbors and Navigation Code is amended to read:

1195.1. (a) The moneys charged and collected each month from the pilot trainee surcharge pursuant to Section 1195 shall be paid to the Pilot Trainee Special Fund established pursuant to Section 1195.2. The moneys shall be used only to fund the pilot trainee training program referred to in subdivision (h) of Section 1171.5 and Section 1195.3.

(b) Information regarding moneys remitted to the Pilot Trainee Special Fund collected from the surcharge authorized pursuant to Section 1195, or otherwise collected by the board for that purpose, and information regarding moneys spent as pilot trainee training program expenses authorized by Section 1195.3 shall be made available to the public upon request and to the board or its finance committee.

SEC. 16. Section 1195.2 is added to the Harbors and Navigation Code, to read:

1195.2. (a) The Pilot Trainee Special Fund is hereby created within the State Treasury. All moneys received by the board from the surcharge authorized by Section 1195 shall be accounted for at the close of each month to the Controller in the form the Controller may prescribe and, at the same time on the order of the Controller, all these moneys shall be paid into the State Treasury to the credit of the Pilot Trainee Special Fund.

(b) Notwithstanding Section 13340 of the Government Code, the moneys in the fund are continuously appropriated for carrying out the purposes specified in Section 1195.1.

(c) Except as provided by this division, moneys in the General Fund or any other state fund shall not be transferred to the Pilot Trainee Special Fund or otherwise used to support the board or to pay the debts, obligations, or encumbrances of the board, its licensees, or trainees.

SEC. 17. Section 1196.1 of the Harbors and Navigation Code is amended to read:

1196.1. (a) The moneys charged and collected each month from the pilot continuing education surcharge pursuant to Section 1196 shall be paid to the Pilot Continuing Education Special Fund created pursuant to

subdivision (h) of Section 1171.5 and Section 1196.3.

(b) Information regarding moneys collected from the surcharge authorized pursuant to Section 1196, or otherwise collected by the board for that purpose, and information regarding moneys spent as pilot continuing education expenses authorized by Section 1196.3 shall be made available to the public upon request and to the board or its finance committee.

SEC. 18. Section 1196.2 is added to the Harbors and Navigation Code, to read:

1196.2. (a) The Pilot Continuing Education Special Fund is hereby created within the State Treasury. The fund shall receive all proceeds from the surcharge authorized by Section 1196. Moneys in the fund may be used by the board, upon appropriation, for continuing education for pilots as provided in Section 1196.1.

(b) Except as provided in this division, moneys in the General Fund or any other state fund shall not be transferred to the Pilot Continuing Education Special Fund or otherwise used to support the board or to pay the debts, obligations, or encumbrances of the board, its licensees, or trainees.

SEC. 19. Section 1200 of the Harbors and Navigation Code is amended to read:

1200. (a) The board may make recommendations to the Legislature regarding potential amendments to the pilotage rates that are specified in Sections 1190 and 1191.

(b) The board shall, from time to time, review pilotage expenses and establish guidelines for the evaluation and application of these expenses regarding its recommendations for adjustments in rates.

SEC. 20. Section 1201 of the Harbors and Navigation Code is amended to read:

1201. (a) Any party directly affected by pilotage rates established under this chapter may petition the board for a public hearing on any of the matters set forth in Section 1200.

(b) Within 10 days from the filing of the petition the board shall call public hearings to be held not less than 30 nor more than 60 days of the date of call for the purpose of holding an evidentiary hearing on the petition. The board shall schedule this evidentiary hearing before an administrative law judge experienced with ratemaking from ~~either the Office of Administrative Hearings or the Administrative Law Judge Division of the Public Utilities Commission.~~ *Hearings.*

(c) The board shall give notice of the hearings to all interested parties who have requested the notification. All interested parties shall have the right to submit comments and evidence in response to a petition prior to the public hearings.

(d) The evidentiary hearing shall be a quasi-judicial proceeding held before an administrative law judge who shall act as a finder of fact. The petitioning party shall have the burden of proving, by a preponderance of the evidence, all of the facts upon which the petition is based.

(e) At the conclusion of the hearing or hearings, the administrative law judge shall issue a decision setting forth recommendations, findings, and conclusions. The decision shall be supported by findings of fact on all issues material to the decision, and the findings of fact shall be based on the evidence in the record developed by the parties before the administrative law judge. Any recommendation to approve the petition or modification in order to partially approve the petition shall be accompanied by a written explanation of each part of the decision or changes made to the petition in the decision.

(f) The decision of the administrative law judge shall be filed with the board and served on all parties without undue delay, but not later than 60 days after the matter has been submitted for decision.

(g) The board shall review and evaluate the findings and recommendations in the administrative law judge's decision and all of the evidence obtained and, within 30 days from the filing of the decision, shall either submit to the Secretary of the Senate and the Chief Clerk of the Assembly a copy of the administrative law judge's decision, findings, and recommendations, supported by a transcript of those proceedings, or prepare and submit to the Secretary of the Senate and the Chief Clerk of the Assembly a written statement of its reasons for not submitting the decision.

1201.5. (a) The administrative law judge and board shall not consider any written evidence for the purpose of considering pilotage rates unless 10 or more copies of the evidence have been deposited with the board as public documents by the party petitioning for a rate adjustment 30 or more days prior to the date set for the commencement of the hearing.

(b) The administrative law judge and board shall not consider any written evidence at the hearing from any party responding to the petition unless the evidence is deposited with the board 10 or more days prior to the date set for the commencement of the hearing.

SEC. 22. Section 1202 of the Harbors and Navigation Code is amended to read:

1202. (a) Notwithstanding any other law, any meeting of the board or hearing by an administrative law judge at which the rates, charges, and levies subject to this division are to be imposed, changed, or discussed shall be open and public, and a transcript of any such meeting shall be prepared and kept by the board.

(b) Public hearings for the purpose of investigating recommendations and findings related to a petition for a change in pilotage rates shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and a full record shall be kept of all evidence offered.

(c) No officer, employee, or agent of the board shall participate in the decision of any factually related petition proceeding, including participation in or advising the administrative law judge as to findings of fact, conclusions of law, or orders, including as a witness or declarant regarding a petition. Nothing in this subdivision prohibits an administrative law judge from asking for an officer, employee, or agent of the board to appear as a witness in open session, unless the officer, employee, or agent has a conflict of interest or is otherwise prohibited by statute from participating in the proceeding.

(d) Ex parte communications with the administrative law judge adjudicating the petition or any members of the board regarding a petition filed under this division are prohibited, including any oral or written communications concerning procedural matters, except for procedural communications with the administrative law judge or the board's executive director, if the ex parte communications are in writing and transmitted to all other interested parties on the same day as the original communication with the administrative law judge or executive director. Written ex parte communications shall be part of the final record of the proceeding made available to the Secretary of the Senate and Chief Clerk of the Assembly, but shall not be made available to members of the board prior to its final action on a decision by an administrative law judge.

SEC. 23. Section 1204 is added to the Harbors and Navigation Code, to read:

1204. The Office of Administrative Hearings ~~or the Administrative Law Judge Division of the Public Utilities Commission~~ shall be compensated at cost by the board for costs associated with the conduct of a hearing or other matters as required by this chapter. Any such expense shall be funded by revenues received by the board from the board operations surcharge, as described in Section 1159.2. The board shall ensure that an administrative law judge has been fully compensated pursuant to this section.

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SB-1312 Bar pilotage rates. (2015-2016)

Date	Action
11/30/16	From committee without further action.
04/12/16	April 12 hearing postponed by committee.
04/04/16	From committee with author's amendments. Read second time and amended. Re-referred to Com. on G.O.
03/15/16	Set for hearing April 12.
03/03/16	Referred to Coms. on G.O. and JUD.
02/22/16	Read first time.
02/22/16	From printer. May be acted upon on or after March 23.
02/19/16	Introduced. To Com. on RLS. for assignment. To print.

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Isadore Hall, III

Chair

2015 - 2016 Regular

Bill No:	SB 1312	Hearing Date:	4/12/2016
Author:	Wieckowski		
Version:	4/4/2016 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Arthur Terzakis		

SUBJECT: Bar pilotage rates

DIGEST: This bill revises and recasts certain provisions that establish pilotage rates and surcharges that are paid to licensed pilots by vessels that are piloted in Monterey Bay and the Bays of San Francisco, San Pablo and Suisun; modifies the pilotage rate-setting process by incorporating an administrative law judge in those proceedings who will act as a finder of fact; requires the clear publication of all rates and surcharges plus an annual audit of all charges collected by pilots; and, imposes on the industry a technology surcharge, as specified, for five years, to recover pilots' costs for navigation software, hardware and equipment.

ANALYSIS:

Existing law:

- 1) Provides for the regulation and licensure of pilots for Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun by the Board of Pilot Commissioners (Board) within the Transportation Agency.
- 2) Specifies that the Board shall consist of seven members appointed by the Governor and one ex-officio non-voting member (the Secretary of the Transportation Agency). Two members are pilots licensed by the Board; two are industry members (one from the tanker industry and one from the dry cargo industry); and, three public members who are neither pilots nor work for companies that use pilots.
- 3) Prescribes the rates of pilotage fees required to be charged by pilots and paid by vessels. The rates involved are set forth in Sections 1190 and 1191 of the Harbors and Navigation Code. Section 1190 relates to bar pilotage for every vessel inward or outward bound over the San Francisco Bar, which lies west of the Golden Gate Bridge, and charges vary, depending on a vessel's gross

registered tonnage and draft. Section 1190 also authorizes an increase in the pilotage rates if the number of pilots licensed to work on the Bays falls below a specified number, or if the Board determines that there has been a catastrophic cost increase to the pilots. Section 1191 of the Harbors and Navigation Code relates to charges for transits that originate and are concluded inland of Golden Gate Bridge – charges for these transits are flat amounts, with the amounts varying with the places at which the transit begins and ends.

- 4) Stipulates that the Board shall recommend that the Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots engaged in ship movements or special operations if rates for those movements or operations are not specified in Section 1190 of the Harbors and Navigation Code.
- 5) Provides that a vessel using pilots for ship movements or special operations that do not constitute bar pilotage shall pay the rate specified in the schedule of pilotage rates adopted by the Legislature.
- 6) Provides for a movement fee as is necessary and authorized by the Board to recover a pilot's costs for the purchase, lease, or maintenance of navigation software, hardware, and ancillary equipment purchased after November 5, 2008 and before January 1, 2011.

This bill:

- 1) Revises and recasts certain provisions (Sections 1190 and 1191 of the Harbors and Navigation Code) that establish pilotage rates and surcharges that are paid to licensed pilots by vessels that are piloted in Monterey Bay and the Bays of San Francisco, San Pablo and Suisun, as specified.
- 2) Authorizes until 1/1/ 2021 a technology surcharge, not to exceed a cumulative amount of \$1.2 million to recover pilots' costs for navigation software, hardware, and equipment authorized by the Board on or after 1/1/2017.
- 3) Requires the Board to submit a schedule of all pilotage rates and surcharges to the Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register and to post that schedule on the Board's Internet Web site.
- 4) Requires an independent audit of all charges collected by pilots to be conducted annually by a public accountant selected by the Board.

- 5) Adds an administrative law judge (ALJ), experienced with ratemaking, to the ratemaking recommendation process and provides that the evidentiary hearing shall be a quasi-judicial proceeding, with the ALJ acting as a finder of fact.
- 6) Prescribes procedures for the conduct of the ALJ hearings, the review of evidence, and the filing of decisions and prohibits ex parte communications with the ALJ adjudicating the hearing or any members of the Board. Also, requires the Board to review and evaluate the ALJ's decision and either submit the decision to the Secretary of the Senate and the Chief Clerk of the Assembly or prepare and submit a written statement of its reasons for not doing so. Additionally, provides that the ALJ shall be compensated by the Board from the Board operations surcharge, as specified.
- 7) Creates the Pilot Trainee Special Fund and requires that moneys charged and collected each month from the pilot trainee surcharge must be deposited into that fund and used only for pilot trainee programs.
- 8) Creates the Pilot Continuing Education Special Fund and requires that moneys charged and collected each month from the pilot continuing education surcharge must be deposited into that fund and used only for pilot continuing education programs.
- 9) Increases damages paid to a pilot who is carried to sea against his or her will, or unnecessarily detained on board a vessel, from the current rate of \$600 per day, plus expenses, from the owner, operator, or agents of the detaining vessel, to a new rate of \$2,028 per day, plus expenses.

Background

Brief Historical Perspective. Bar pilots have been guiding ships into San Francisco Bay, one of the most treacherous passages in the world, since at least 1835. The work that bar pilots performed was so important that one of the first legislative enactments by the newly formed California Legislature that met in San Jose in 1850 was to address the regulation of bar pilots.

California's history of piloting parallels to a large extent the history of pilotage throughout the United States. Prior to the American Revolution, pilotage was regulated by colonial legislatures. They generally provided for the commissioning of pilots, apprenticeship requirements to become a pilot, specified the type and size of pilot boats used in the service, and established fees to be charged. When the United States Constitution was adopted, it recognized that pilotage fell within the domain of the federal government because it involved regulation of instruments of

foreign commerce. One of the first acts of the newly formed Congress in 1789 was to recognize the existing state laws regulating pilots and delegate to the states the authority to continue to regulate pilotage because of its unique character.

Bar pilots are responsible for steering an arriving vessel through the Golden Gate of San Francisco Bay, the Bay waters and adjoining navigable waters, which include San Pablo Bay, Suisun Bay, the Sacramento River and its tributaries. When a vessel approaches the "SF" buoy several miles west of the Golden Gate Bridge, a bar pilot boards the ship and takes navigational control. (Pilots in San Francisco are called "Bar Pilots" because they board and disembark ships just beyond a treacherous sand bar which provides a natural obstacle to shipping.) It becomes the pilot's responsibility to guide the ship to its berth. The bar pilots provide service to all types of vessels, from 100-foot tugs to 1000-foot supertankers.

Pilots are generally mandatory in every major port throughout the world and their pilotage service is paid for by the vessel owner/agent. As noted above, the San Francisco Bar Pilots have been state regulated and licensed since 1850 to pilot vessels to various ports in the Bay Area such as San Francisco, Oakland, Redwood City, Martinez, Richmond, Pittsburgh, Vallejo, Rodeo, Antioch, Stockton, Sacramento and more recently including Monterey.

Purpose of SB 1312. According to the author's office, this bill is intended to enhance navigational safety and make a series of common sense reforms to the pilotage rate setting process in the San Francisco Bay and river pilotage system. The author's office believes these changes will ensure continued and improved support of the state's comprehensive oil spill prevention and response regime, improve public safety and navigation, and protect both the environment and the state's maritime economy. The author's office points out that the industry and pilots both support re-establishment of the navigational technology surcharge which was allowed to sunset in 2011. This bill provides some relief to the pilots by giving them access to the revenue garnered by this surcharge to recover their costs for navigation software, hardware, and equipment.

Prior/Related Legislation

AB 1432 (Bonta, 2015), increases pilotage fees and rates, as specified, for commercial vessels calling on ports in San Francisco, San Pablo, Suisun, and Monterey Bay, including the Sacramento River to the Port of Sacramento and the San Joaquin River to the Port of Stockton. This bill also reinstitutes a navigation technology surcharge for the purchase or lease by the pilots of navigation hardware and software to enhance navigation safety. (Senate Inactive File)

AB 2287 (Swanson, of 2012) stated the intent of the Legislature to enact legislation that would require a 2nd bar pilot for safety in the San Francisco Bay and its tributaries for ultra large container vessels, and what the appropriate compensation is for the 2nd pilot. (Held in Assembly Appropriations Committee)

AB 2042 (Huber, 2012) would have eliminated the Board of Pilot Commissioners, effective January 1, 2022, and transferred the Board's functions and duties to the Secretary of Business, Transportation and Housing. Also, would have recast and reenacted certain provisions that regulate pilotage for those bays, as provided. (Held in this committee at author's request)

AB 907 (Ma, 2011), among other things, would have increased pilotage fees and rates, as specified for Monterey Bay and the Bays of San Francisco, San Pablo and Suisun and established a fuel surcharge for all vessel moves using pilotage service to be determined by the board. (Failed passage in this committee and was subsequently gutted and amended for other purposes)

AB 1025 (Skinner, Chapter 324, Statutes of 2011) made the following substantive changes to existing provisions of law relating to bar pilotage : (a) modified the definition of "inland pilot" to mean a person holding an inland pilot license prior to January 1, 2011 and deleted all references to inland pilots, (b) required the Board's assistant director be appointed by the Secretary of Business, Transportation and Housing, instead of the Governor, and to serve at the pleasure of the Secretary, (c) recast certain provisions relating to violations of safety standards to require the executive director instead of an assigned commission investigator to perform investigations, make findings and recommendations and report to the Board, and (d) authorized the Board to charge an examination fee, as specified, to each applicant to the pilot trainee training program.

AB 1888 (Ma, Chapter 455, Statutes of 2010), among other things, revised the terms for members of the Board who are licensed pilots and members who represent the industry and exempted from those pilotage fees and surcharges noncommercial vessels that are maritime academy training vessels and vessels owned and operated by nonprofit museums or foundations. These vessels would be subject to the Board operations surcharge.

SB 300 (Yee, Chapter 497, Statutes of 2009) established a surcharge for payment of navigational aids for bar pilots and revised the pilotage rate based upon the current number of bar pilots.

SB 1627 (Wiggins, Chapter 567, Statutes of 2008) made numerous substantive, clarifying and technical changes to the body of law relating to the Board of Pilot

Commissioners by injecting ongoing and continuous legislative oversight and administrative responsibility within the existing pilot licensing framework, without altering the Board, its charge, or composition and without changing current pilotage rates, pilot pension benefits, or duties and responsibilities of current, past or future licensed pilots. Also, directed the State Auditor to conduct a comprehensive performance/financial audit of the Board.

SB 1217 (Yee, Chapter 568, Statutes of 2008) required the Board of Pilot Commissioners to appoint a physician or physicians who are qualified to determine the suitability of a person to perform his or her duties as a pilot, an inland pilot, or a pilot trainee in accordance with specified requirements. Also, required the Board to terminate a pilot trainee or suspend or revoke the license of a pilot or an inland pilot who fails to submit the prescribed medication information required by these provisions.

AB 852 (Leno, Chapter 129, Statutes of 2005), among other things, authorized revenue generated by the pilot boat surcharge to be used to pay for pilot boat design and engineering modifications intended to extend the service life of existing boats, in addition to the existing purpose of purchasing new pilot boats.

SB 1303 (Torlakson, Chapter 560, Statutes of 2004) made a minor change to an existing provision of law relative to representation on the Board of Pilot Commissioners by clarifying that the Board's two industry members must be substantial users of any of the waters of the Bays of San Francisco, San Pablo, Suisun, or Monterey.

SB 1353 (Perata, Chapter 765, Statutes of 2002) established a schedule of incremental changes (through January 1, 2006) to the rates and special surcharges that bar pilots may impose on vessels that move in and out of the Bays of San Francisco, San Pablo and Suisun.

SB 637 (McPherson, Chapter 177, Statutes of 2001) allowed San Francisco bar pilots to pilot commercial vessels calling on ports in "Monterey Bay" by including Monterey Bay within the system of state regulated pilotage for the Bays of San Francisco, San Pablo and Suisun.

SB 2177 (McPherson, 2000) would have applied existing provisions of law relative to the regulation, licensing, and management of pilots for the Bays of San Francisco, San Pablo and Suisun to persons who pilot vessels into or out of the waters of Monterey Bay. (Held in Assembly policy committee at author's request)

SB 2144 (Perata, Chapter 394, Statutes of 2000) made various modifications to provisions of law governing the licensing of bar pilots.

SB 1109 (Burton, Chapter 786, Statutes of 2000), among other things, required a vessel owner and its operators to defend, indemnify, and hold harmless, a bar pilot from any liability and expenses in connection with any civil claim suit as action arising out of the pilot's performance of the pilotage services, except for acts of willful misconduct.

AB 951 (Wiggins, Chapter 261, Statutes of 1999) codified the agreement on bar pilotage rate increases reached between the San Francisco Bar Pilots and the Pacific Merchant Shipping Association.

SB 1741 (Johnston, Chapter 1115, Statutes of 1996), among other things, established a schedule of bar pilotage rate increases that were phased in over a three-year period (1997-99).

SB 496 (M. Thompson, Chapter 711, Statutes of 1995) revised the formula the fiduciary uses to calculate the quarterly adjustment for pilotage rates. Also, changed the schedule of pilotage fees for ship movements and internal operations, as specified.

SB 2068 (Johnston, Chapter 385, Statutes of 1994) increased the pilotage rate from 60.70 mills to 64.88 mills and required the Board to temporarily reduce the additional charge, as specified, if maintenance and repair costs of two pilot boats are less than \$200,000.

SB 238 (Lockyer, Chapter 1192, Statutes of 1993) increased the rate of the additional pilotage charge from 60.56 mills per high gross registered ton to 60.70 mills. Also, included inland pilots, as defined, in the pension benefit program.

AB 1768 (Papan, Chapter 1653, Statutes of 1984) among other things, established a unified system of state regulated pilotage whereby inland pilots became members of the San Francisco Bar Pilots Association and the combined group assumed joint responsibility for all pilotage moves on the pilotage grounds (San Francisco, San Pablo, and Suisun Bays and all other ports included therein.)

AB 1061 (Agnos, Chapter 1306, Statutes of 1983) increased pilotage rates and pension benefits, as specified.

AB 2027 (Felando, 1983), among other things, would have created three classes of pilots (pilots, inland pilots, and company pilots) and would have repealed existing

law relative to the Legislature establishing pilotage rates. (Held in this Committee at author's request)

AB 3603 (Brown, W., 1982) would have provided a unified system of state regulated bar and inland pilotage. (Dropped at author's request in Senate Finance Committee)

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

SUPPORT:

California Cotton Ginners and Growers Associations
Pacific Merchant Shipping Association
Western Agricultural Processors Association
Western Plant Health Association

OPPOSITION:

International Organization of Masters, Mates and Pilots
San Francisco Bar Pilots Association

ARGUMENTS IN SUPPORT: Writing in support, the Pacific Merchant Shipping Association (PMSA) states, this bill "Creates clear responsibility and accountability for the ratemaking recommendation process by reinstituting the use of Administrative Law Judges as fact-finders for all rate change recommendations, and require the clear publication of all rates and surcharges plus an annual audit of the same. SB 1312 creates this new level of transparency and accountability without any disruption to operations by codifying existing rates and surcharges that are already in place and governing licensee conduct."

Additionally, PMSA notes, "The current ratemaking system for state pilotage has resulted in unsuccessful rate increase proposals being brought before the Legislature in 2004, 2011, 2012, and 2015. While industry opposed each of these rate increase bills successfully, it is our belief that these bills failed primarily because the current pilot rate-setting system is broken. Without Legislative or Administration confidence in the integrity and objectivity of the process of rate-setting itself, these failed attempts at rate changes which have manifested themselves over the past decade will just continue to reoccur over and over again and continue to place the Legislature in an awkward position. Our coalition supports this bill's creation of a system with the necessary objectivity and unimpeachable integrity necessary to re-establish confidence in this system."

ARGUMENTS IN OPPOSITION: Writing in opposition, the San Francisco Bar Pilots Association states, "The Board is comprised of members with extensive knowledge in marine transportation and maritime practices who provide valuable insights to tackle unique issues regarding pilotage, rates, safety and shipping in general. Accordingly, the Board should be consulted to fully vet many of the issues raised in SB 1312. Last year, AB 1432 (Bonta) was introduced to enact the pilotage rate recommendations of the Board following an evidentiary hearing held pursuant to the existing long-standing statutory and regulatory rate setting process. SB 1312 adds yet another bureaucratic step to the process of determining pilotage rates on San Francisco Bay. It does not remove the Legislature from the process. In fact, it may increase the number of bar pilot issues being brought before the Legislature. This bill seeks to change the rate making process by adding a third layer of bureaucracy (the addition of an ALJ) which may only increase the frequency of pilotage rate legislation that the Legislature will ultimately have to approve. In short, legislators will still be required to vote on rate bills in the future. A similar process in which an ALJ was used for rate hearings existed in 1991-1995 and was repealed by its own terms due to mixed reviews of its efficacy and cost by both the industry and pilots. In fact, there has been no showing that existing law is inadequate to address these concerns or that the Board has been petitioned by the industry to address these concerns."

Furthermore, the San Francisco Bar Pilots Association argues that "there are a substantial number of provisions in this bill that are best left to the Board to address without the need for additional legislation. A change to the rate setting process will take a minimum of two years to pass and implement – yet, as currently proposed in this bill it is likely that the Legislature will remain heavily involved in the rate making process."

DUAL REFERRAL: Senate Judiciary Committee